Office Supreme Court U.S.
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JAMES H. McKENNEY,
Clerk.

No. 35. 5553

Motion to modify Judg &c.

Filed Jan. 28, 1901

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 35.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, *Plaintiff in Error,*
vs.
WIRT ADAMS, *Defendant in Error.*

In Error to the Supreme Court of Mississippi.

In the matter of the petition of the Yazoo & Mississippi Valley Railroad Company for a rehearing or a modification of the judgment rendered in this cause.

SEWARD, GUTHRIE & STEELE,
MAYES & HARRIS,
J. M. DICKINSON,
ATTORNEYS FOR PLAINTIFF IN ERROR.

BARNARD & MILLER PRINT, CHICAGO.

IN THE

Supreme Court of the United States,

OCTOBER TERM, A. D. 1900.

No. 35.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY,
Plaintiff in Error,
vs.
WIRT ADAMS,
Defendant in Error.

In Error to the Supreme Court of Mississippi.

NOTICE.

To Wirt Adams:

You are hereby notified that on Monday, January 28, 1901, Plaintiff in Error will submit a petition to the Supreme Court of the United States, in the City of Washington, District of Columbia, for a rehearing or a modification of the judgment in the above cause, and for such other and further proceedings as may be needful and proper.

SEWARD, GUTHRIE & STEELE,
MAYES & HARRIS,
J. M. DICKINSON,
Attorneys for Plaintiff in Error.

Service of this notice is acknowledged this 21st *day of January, 1901.*

T. A. Critz and
R. G. Beckett
Attorneys for Defendant in Error

IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1900.

No. 35.

YAZOO & MISSISSIPPI VALLEY RAILROAD COMPANY, *Plaintiff in Error,* *vs.* WIRT ADAMS, *Defendant in Error.*	In Error to the Supreme Court of Mississippi.

PETITION.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Now comes the Yazoo & Mississippi Valley Railroad Company, by its attorneys, and respectfully presents to this Honorable Court its petition, for a rehearing, or a modification of the judgment in this cause, in accordance with the opinion handed down on the 7th day of January, 1901, and for such other and further relief as may be needful and proper.

The following reasons are submitted why its prayer should be granted:

This cause involved the right of the defendant in error to enforce the payment of taxes against plaintiff in error, and against the constituent companies composing the consolidated company which is the plaintiff in error in this case for the year 1892 as well as for years thereafter.

Various questions were presented to this Honorable Court upon which the plaintiff in error predicated a defense to all of said taxes, including those for the year of 1892, and among such defenses was the claim that a federal question was involved, that, the said property was exempt from taxation for the year 1892 by contract with the state which had been executed as to the taxes for said year, and could not be lawfully impaired by the subsequent legislation upon which defendant in error founds his right to collect said taxes; that the defendant in error, in attempting to enforce the collection of the taxes against this defendant upon its railroad properties for the year 1892, in manner and form as the same are sought to be enforced, is acting in violation of the constitution of the United States of America in that the said enforcement of the payment of said taxes will deprive the plaintiff in error of contract rights protected by the constitution of the United States of America.

This Honorable Court, in the opinion which has been handed down, did not decide any of the foregoing propositions, but did decide that if plaintiff in error at any time had any contract of commutation or exemption or any right to any protection against the action of defendant in error under and by virtue of the constitution of the United States, the same had been lost by the consolidation which took place October 24, 1892, between the Louisville, New Orleans & Texas Railway Company and the Yazoo & Mississippi Valley Railroad Company, the constituent companies of the new company known as the Yazoo & Mississippi Valley Railroad Company, which is plaintiff in error in this cause.

A decision of the question arising under the Constitu-

tion of the United States was expressly withheld, but the court in respect to such question said as follows:

> "It is true that in the act of March 9, 1882, authorizing the Baton Rouge Company to consolidate, in the act of March 3, 1892, authorizing the Memphis & Vicksburg Company to consolidate, and in the act of February 17, 1882, authorizing consolidations by the Yazoo Company, there were provisions that the consolidated companies should be entitled to the rights, privileges, franchises, property grants and immunities belonging to constituent companies, among which, under the name of immunities, might pass an exemption from taxation, as has been sometimes held by this court; and had not the constitutional provisions of 1890 taken effect before the final consolidation of 1892, we might have been obliged to hold that the consolidated company was entitled to the commutation of taxes provided for in the twenty-first section of the charter of the Mobile and Northwestern Company. But it is scarcely necessary to say that, if the consolidation of 1892 resulted in a new corporation, it would come into existence under the constitution of 1890, with the disabilities attaching thereto, among which is the provision that 'the property of all private corporations for pecuniary gain shall be taxed in the same way and to the same extent as property of individuals.' Even if the legislature, in these several acts of consolidation, had expressly provided that the new corporation thereby formed should be exempted from taxation, the higher law of the constitution would be interpreted as nullifying it to that extent."

The judgment of the lower court in this case included the taxes for the year 1892 as well as taxes for subsequent years, and the court below put its opinion on two grounds and the judgment in this court affirming the judgment of the court below will, unless modified, include said taxes for the year 1892, and cut off in respect to them all pos-

sibility of plaintiff in error getting any benefit of any defenses which it may have under and by virtue of the constitution of the United States of America, in respect of taxes prior to the consolidation.

By express provisions in the orders of consolidation in said causes it was stipulated and ordered that such consolidations of such causes should not operate to the prejudice of either litigant. (See Tr., pp. 106 and 610.)

Section 115 of the constitution of the State of Mississippi provides as follows:

> "The fiscal year of the State of Mississippi shall commence on the first day of October and end on the thirtieth day of September of each year; and the auditor of public accounts and the treasurer of the state shall compile and have published a full and complete report showing the transactions of their respective offices on or before the thirty-first day of December of each year for the preceding fiscal year."

Section 12 of the act adopting the Annotated Code of Mississippi, 1892 (Annotated Code, p. 115), provides as follows:

> "The chapters in the Annotated Code entitled 'Board of Supervisors', 'Corporations', 'Convicts in County Jails', 'Fences and Stock', 'Land Office', 'Lost Records', 'Municipalities', 'Pensions', 'Primary Meetings and Elections', 'Privilege Taxes', 'Registration and Election', 'Revenue', 'Roads, Ferries and Bridges', 'Salaries', 'State Revenue Agent', 'Supervision of Common Carriers', and that part of the chapter on 'Fees' relating to the fees of the land commissioner and that part of the chapter on 'Railroads' relating to the incorporation of railroad companies, and the chapter on 'Dram-shops' as to all licenses which may hereafter be obtained, *shall take effect and be in force from and after the passage of this act;* and that part of the chapters entitled 'Chancery

Courts' and 'Circuit Courts', which fixes the judicial districts and the times for holding courts and the length of their terms in the several counties, shall take effect and be in force from and after the first day of July, 1892; and such chapters and parts of chapters shall be published in the session acts of this year, but no other parts of said code shall be so published."

This act was approved April 2, 1892 (Annotated Code, p. 116).

Section 3746 of said Code provides as follows:

"Taxes, both state and county, assessed upon lands or personal property, shall bind the same, and be entitled to preference over all judgments, executions, incumbrances or liens, whensoever created; and all taxes assessed shall be a lien upon and bind the property assessed from the first day of February of the year in which the assessment shall be made; and no property shall be exempt from distress and sale for taxes. And it shall not be necessary to the validity of an assessment or of a sale of land for taxes that it shall be assessed to its true owner; but the taxes shall be a charge on the land or personal property taxed, and the sale shall be a proceeding against the thing sold, and shall vest title in the purchaser, without regard to who may own the land or other property when assessed or when sold, or whether wrongfully assessed, either to a person, or to the state, or any county, city, town or village, or subdivision of either."

Section 3748 of said Code provides as follows:

"All taxable property brought into the state or acquired or held by any person before the first day of February shall be assessed, and taxes thereon paid for the current year."

Section 3875 of said Code provides as follows:

"Each railroad company owning and operating a railroad shall, on or before the first Monday in April in each year, file with the railroad commission a complete schedule, under oath, of all its property, real or personal, taxable and non-taxable, setting forth therein the length in miles or fractions thereof of its entire road-bed, switches and side-tracks, and showing how many miles or fractions thereof lie in this state, and in each county of the state, and in each city, town or village, and the value of the whole and each part thereof, as subdivided herein; the total amount of capital stock, its par value and its actual value, and the value of its franchise; the number of engines and their respective value; the gross amount of receipts in the year preceding; the number of cars of all kinds, their classes and value; the number of depot buildings and warehouses and other buildings; in what county and city, town, village or levee district located, and the value of each, including the lands and lots upon which the same are built; the value of all machine and car shops and stationary machinery and tools therein, and in what county and city, town, village or levee district located, including the land upon which the same are built; all real, personal or mixed property belonging to the company within the state, not enumerated, with its value; the number of bridges and ferries in this state, in what county and city, town, village or levee district situated, and the value of each, and specifying whether such value is or is not included in the value of the road-bed; a list of all lands in this state owned, describing the same, and giving the location and value thereof, the quantity of land used for depots and machine shops, and its value aside from the buildings thereon; the gross amount of receipts the year preceding from passengers and freights separately, and the proportion thereof earned within and from this state; and if any of said property is claimed to be exempt from taxation, it shall be separately stated, and the law cited under which the claim is made."

Section 3876 of said Code provides as follows:

"If any company, corporation or person who should do so, shall fail, neglect or refuse to render the schedule required by the last section, such company, corporation or person shall forfeit and pay to the state for every such failure, neglect or refusal the sum of five thousand dollars, to be recovered by action, which shall be instituted and prosecuted under the direction of the railroad commission; and, in case of such failure, neglect or refusal the commission shall make out such schedule from the best information obtainable."

Section 3794 *a* of said Code provides as follows:

"The clerk shall make two fair copies of each roll, and three in counties having two judicial districts, as examined and corrected, if it be corrected, one of which he shall transmit to the auditor of public accounts on or before the first Monday of October following; the other he shall deliver to the tax collector on or before the first day of October, and the original he shall retain and carefully preserve as a public record in his office."

Section 3801 of said Code provides as follows:

"On receipt of the assessment rolls the collector shall immediately proceed to collect the taxes, adding the county tax due by each person to his state tax, and collecting all together; and it shall be the duty of every person assessed to pay his taxes to the collector on or before the fifteenth day of December."

The consolidation which took place October 24, 1892, and by virtue of which the court has held that the exemption from taxation if such existed, was lost, was made after the time fixed as of which date the property was assessable to the person or corporation then owning such property. The taxes that were assessable for the year 1892 upon the property of the companies which were con-

solidated into the Yazoo & Mississippi Valley Railroad Company were, for that year, assessable, and were assessed, respectively, to such companies and not to the consolidated company, and at the time such properties were assessable the exemption, if any such exemption existed, had attached and become fixed as to the year 1892, and was in full force and effect, and was not and could not have been lost by such consolidation.

Such assessment was in fact completed after hearing certain objections interposed by the Louisville, New Orleans & Texas Railway Company on the 22d day of September, 1892, which was more than a month prior to such consolidation. (See Tr., pp. 2 and 127.)

The declaration for the taxes of 1892 reads as follows (Rec., 2): "For that, whereas, heretofore, to wit: during the year 1892, the railroads and property of the Louisville, New Orleans & Texas Railway Company, a corporation, * * * was duly assessed for taxation in said State of Mississippi, under its laws, by the Mississippi railroad commission, the said assessment being completed after objections heard on September 22, 1892."

The articles of consolidation were executed on October 24, 1892 (Rec., 14), and the taxes of 1893 and 1894 are alleged (Rec., 71) to have been assessed upon the railroad and property of the constituent company, the Louisville, New Orleans & Texas Railway Company, which became the property of the Yazoo & Mississippi Valley and Illinois Central Railroad Companies in October, 1892. The distinction is, therefore, apparent upon the face of the record. The court below placed its opinion not only upon the consolidation, but upon the ground that the contract of commutation or exemption itself was invalid. This

was necessary in order to affect the taxes for the year 1892.

If it be that said companies before such consolidation had a lawful exemption which was lost by such consolidation, it will work a great hardship if the judgment in this cause be affirmed in respect to the taxes for the year 1892, for thereby all consideration of the defenses set up by plaintiff in error, and which were regarded by this Honorable Court as cut off by the consolidation of October 24, 1892, will be entirely lost and plaintiff in error will be compelled to pay the taxes, amounting to a large sum of money, approximating one hundred thousand dollars, which it does not justly owe, and can never get any relief from such unlawful burden.

Wherefore, it is respectfully urged that the judgment be modified so as to exclude the taxes sought to be recovered for the year 1892, and that such further proceedings in respect of the taxes for said year may be had as justice may require, by affirming as to the taxes for the other years, letting the mandate go down as to them, and proceeding to a decision upon the federal question raised as to the taxes for 1892 upon the arguments already submitted or upon further argument.

Respectfully submitted.

SEWARD, GUTHRIE & STEELE,
MAYES & HARRIS,
J. M. DICKINSON,
Attorneys for Plaintiff in Error.